

## GILBERT DID NOT EXPLAIN MANY THINGS

(Continued From First Page.)

bill of lading, which, if disclosed, might create trouble and lead to an investigation.

Mr. Carter: "Gates has testified that he paid certain claims against the railroad rather than have fake bills disclosed. What have you to say to this statement?"

Gilbert: "That statement is absolutely false."

"Gates said that he had an agreement with you, whereby fraudulent shipments were made possible. Is that true?"

"It is false."

"When did you first receive information that false billing was being carried on by W. R. Johnston and Company?"

"On the afternoon of October 29, 1907. A young man named Yarbrough, inspector for the Southern Weighing and Inspection Bureau, entered my office and it was from him that I learned of the fraudulent practices. I at once wrote a letter to Gilbert T. Swain, calling his attention to the matter."

Judge Lewis objected to hearsay evidence of Yarbrough.

Judge Waddill asked the attorneys for frequent wrangling, saying that under such circumstances it was not natural for the witnesses, now and then, to become indiscreet. Mr. Gilbert's letter to Swain was produced and placed in the evidence.

Called for Gates.

"What were your next steps, Mr. Gilbert?" asked Attorney Carter.

"I phoned to the office of W. R. Johnston and Company, and told him to send Gates to my office."

"Did Gates obey your summons?"

"He did not appear in my office until the next day."

"What did you do upon his arrival?"

"I upbraided him for his deception, and he denied having been guilty of forgeries. He admitted to me afterwards that part of the bills, though not all of them, were spurious."

Gilbert: "I told Gates that the matter was a serious one, and the Chesapeake and Ohio would have to sue him for all his previous work."

Mr. Smith: "Gates has stated that you had entered into an agreement with him whereby he was to keep falsified shipment papers in his office on a secret file. Is this true or false?"

"I pronounce that statement false."

Gilbert stated that his talk with Gates, his detection of fake billing, and his letters to the freight agents of the Atlantic Coast Line and Seaboard Air Line railways preceded his knowledge of the fact that the Interstate Commerce Commission was at work, or even cognizant of the irregularities.

Numerous recommitment orders alleged to have been issued by Gilbert were handed the witness. He almost invariably stated that the signature, "A. P. G." was his own, but that the body of the orders had been changed to fit the shipments.

Mr. Carter: "Is that paper on which the orders are written a kind of order which erases can be made without showing distinctly?"

"Yes, I have tested it."

Judge Waddill: "Were all these orders issued in pencil?"

"Yes."

Judge Lewis: "Every one, and every one that can be produced, is written in pencil."

"It was here that Mr. Carter announced that the defense had concluded its examination. It was 11:10 o'clock."

Judge Lewis Cross-Examines.

Just before being turned over for cross-examination, Gilbert asked that he be allowed to take a drink of water. He was allowed that privilege. Judge Lewis put the questions.

"You say you have known Gates for years?"

"I think since 1898, when I became chief clerk in the general freight office."

"How long before you got your present position?"

"I was appointed to my present position in February, 1904."

"You had many transactions with Gates?"

"Yes."

"Gates held a responsible position in the business world. Did he?"

"I cannot say. He was W. R. Johnston's clerk, who is a responsible grain dealer."

"Did Gates hold the position of shipping clerk?"

"Yes."

"Was Johnston an extensive patron of the Chesapeake and Ohio?"

"I can't say."

"There were objections to questions along this line, and Judge Lewis withdrew."

"Do you know that Gates for Johnston, refused shipments from other roads?"

"I can't say as to that."

"Do you deny that Gates ever told you that he refused shipments?"

"I have no recollection of such a conversation."

Not Personal Friends.

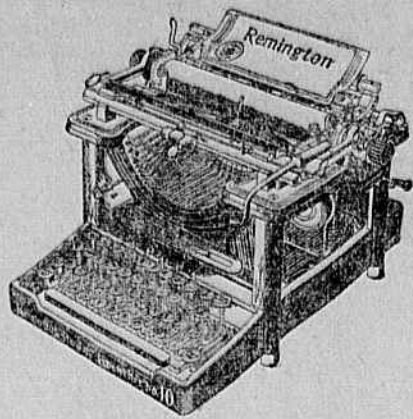
"You and Gates have been friends, have you?"

"We had business relations in my office. I once met him at a Masonic banquet. I regarded him an honest man."

"Suppose twelve months ago Gates had been on trial, would you have said that he was an honest man, and would you have taken his statements at that time?"

Mr. Carter strenuously objected, but the question was allowed. The reply was: "My estimate of Gates' character has changed materially since I found out he lied to me, and still more since I heard of these forgeries."

"You have admitted the signatures



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on these orders?"

"Yes."

"And that they were written on paper on which erasures are easily made?"

"Yes."

"Tell the jury why they were written in pencil?"

"I thought I was dealing with an honest man. He was to carry the orders direct to the station, and I thought he did so."

"Can you recall a time when you wrote in ink?"

"The paper is not adapted to pen and ink writing. I cannot."

"Why was it that during these years Johnston's consignments were made on special orders?"

"I don't know. As chief clerk I made out all the orders, but in my present position one of my clerks is as likely to have made out the order as myself."

"Can you name a shipper to whom you gave a special order to besides Johnston?"

"Nearly all of them."

"Was there anything suspicious in Gates coming to you for these orders?"

"Nothing. I was glad to see any patron of the road in my office, and always tried to treat him courteously."

"Didn't you issue very many more orders for Johnston than for any other shipper?"

"Probably."

Can't Speak for Gates.

"Do you know why Gates came to you for special orders?"

"No."

"Did you, in all your transactions with Gates, look to see if the expense bill was correct?"

"No."

"Do you ever direct any of your subordinates to do so?"

"No special orders. It was generally understood that a man would not pass a spurious document."

"Did you ever hear of any complaint that the expense bills were irregular?"

"No."

"Did it ever occur to you that Gates made shipments in your absence and promised to get authority from you after your return to the city?"

"I don't know of any shipments being sent without my authority."

"You don't know of any such shipments?"

"No."

"Do not. That was a question between Gates and the billing clerk."

"Do you remember calling Chappell up at the Ninth Street freight station and telling him that Johnston, of the Interstate Commerce Commission, was in town?"

"I deny it positively. I called him up and told him to make corrections."

"Did you say to Chappell that anybody was here?"

"As I didn't know he was here."

"Did you tell Chappell that the information you were acting on in making corrections came from Yarbrough?"

"I didn't say whom."

"Didn't Chappell call you up and say that the man is here?"

"Yes."

"When you told Chappell to make the corrections didn't he reply that it would be impossible?"

"Yes."

"I thought at that time that the only fraud was in the expense bills, and didn't realize the extent of the operations."

"Was it for Chappell to say they were true or false, and to have investigated?"

"It would have been if the expense bills had remained as they were."

"What motive did Gates have in using the order signed 'E. D. H.'?"

"An answer to that would be speculation on my part."

"Couldn't Gates go into the Ninth Street office and get blank expense bills?"

"I can't say."

"Do you know that Chappell said he couldn't make all the corrections?"

"I believe he did, but I didn't realize from my knowledge that the violations had been so flagrant."

"Do you deny that you ordered all

loss and damage claims to be brought to you personally?"

"I do. They may have come to me personally, but I issued no such order."

"What was the use of marking them personal if you didn't handle them?"

"It was a physical impossibility for me to handle all the claims personally."

"Why did you write personal letters to Capps and Perley?"

"The Chesapeake and Ohio Railway was once a member of the Southern Weighing and Inspection Bureau, but the officers of the company found it inexpedient to continue the membership, and I wanted to make our investigation before the bureau got hold of it."

"Why did you say in your letter that the violations did not go behind August 13, 1907?"

"I took Gates' statement."

"When Capps wrote and suggested that you investigate for several years back, why did you not answer his letter, and why did you let the matter drop?"

"The Interstate Commerce Commission took charge."

"Why did you go to the station and to Swain to keep quiet?"

"I did not remember that."

"Do you deny it?"

"I don't remember it."

"Do you recall going there?"

"No. There was no occasion for my going there."

"Did you make any statement when Commissioner Lane was here conducting his investigation?"

"I was not invited to make a statement."

It was at this juncture that the witness was turned over to Attorney Marble, who was much more vigorous in his examination than Judge Lewis had been. Many questions of a purely technical character were asked, and Gilbert in his replies parried cleverly.

Mr. Marble: "You were formerly with the Baltimore and Ohio Railway Company at the Camden Street station, in Baltimore, were you not?"

Gilbert: "I was there in the local station and in the general office."

"What questions relative to the defendant's business experience were asked and answered, witness stated that he had nothing to do with the campaign for business for the Chesapeake and Ohio."

"Did you ever look to see that your recommitment orders were carried out?"

"I didn't consider it my duty."

"Did you consider it your duty to see that your orders were carried out, even though the Ninth Street station was under your direction?"

"No."

Only One in Authority.

"You are the only person authorized to give authority for recommitments?"

"Yes, sir, or under my direction."

"What papers are sent you to secure recommitments?"

"The mass of recommitments arise from unclaimed freight cars left up with shipper, and then issue the order at his dictation. As soon as the freight is removed, the order is given, and the shipper when his freight is unclaimed."

"When would you receive an expense bill?"

"On grain shipments."

"With regard to what class of recommitments are expense bills forwarded?"

"On shipments from the West or from the Valley. What we want particularly is the point of origin."

"Do you exercise this duty frequently?"

"I can't say."

"I want to get an idea of the volume of business so handled."

"I can't answer you."

Mr. Gilbert frequently stated during the examination that he could not give exactly the number of cars sent out under recommitment orders each week, but finally stated that probably six or eight such cars went out, and that of this number probably two or three were sent South for Johnston.

"Who came to you personally?"

"Many people."

Systematic Visitor.

"How many recommitments?"

"Gates came three or four times a week with expense bills to get recommitments."

"What kind of shipments are you in the habit of recommitting?"

"Grain and packing-house products cover all."

"Who came to you systematically and asked for recommitments?"

"Gates came to me systematically, and I think he was the only one."

"Do you keep acquainted with the volume of business by your road?"

"No."

Are you familiar with the territory traversed by your road—where the flat country and where the mountains are situated?"

"In a general way."

"Did you ever suspect these Valley expense bills brought to you by Gates?"

"I never gave it any thought."

"Was there a time when no reference to the tariff was given?"

"No."

Was there a publication of the facilities for recommitment prior to the enactment of the Hepburn act?"

"No."

Mr. Marble Analyses.

Mr. Carter started to say something. Mr. Marble turned and said sharply: "Don't coach the witness."

The attorney for the defense was on his feet in a moment. Judge Waddill interrupted to say that Mr. Carter did not like Mr. Marble's retort. The prosecutor apologized and proceeded with his questioning.

"Do you know when the Hepburn act became effective?"

"August 29, 1906."

Mr. Marble produced the rule published by the Chesapeake and Ohio prior to the passage of the act. Mr. Gilbert explained that the rule did not

apply to any particular recommitments, but simply to recommitments from one point on the Chesapeake and Ohio to another.

"The rule applies to recommitments from Richmond, when the shipment is going to another point on the road," he concluded.

Mr. Marble: "This rule was not applied on Valley shipments into the Carolinas, as I understand it, but there was nothing to tell that it was not to be so applied."

Judge Waddill here interrupted to allow several character witnesses to be heard.

Character Witnesses.

Mr. S. H. Hawes testified that he was in the coal business in this city and had his residence in Henrico county.

"How long have you been in business here?" asked Mr. Carter.

"Do you know Alexander P. Gilbert?"

"Do you know his general reputation for truth, veracity and honesty?"

"Yes."

"What is it?"

"From his reputation, would you believe any statement he might make?"

"I would believe anything he said."

"Have you ever heard his veracity questioned?"

Judge Lewis: "What have been your opportunities to know this defendant?"

"I have been a large shipper over the Chesapeake and Ohio."

"Did you ever hear his reputation discussed?"

"No, sir. I have had many dealings with him, and have never known anything questionable."

Mr. L. C. Scott, of Ashland, an employer in the State pension office, was sworn. He had known Gilbert eight years—ever since his residence in Ashland—and had never heard his reputation questioned.

"Believe anything he said," ended Mr. Scott.

Judge Lewis: "What opportunities have you had of knowing him?"

"I see him every day."

The court adjourned at 1:20 until 3 o'clock.

Mr. Gilbert Recalled.

Mr. Gilbert was recalled to the stand when the hearing resumed at 3 o'clock, and Attorney Marble proceeded with the cross-examination. The attention at the opening indicated an increasing interest in the case.

Clerk Brady called the jurors.

"Did you see these recommitment orders?"

"Yes, I saw them in the clerk's office ten days before the trial began, and I saw several of them in the hands of Commissioner Lane. I did not see them prior to this latter time, after I gave them to Gates."

"Why didn't you send for them the first thing when you heard that there were recommitment orders?"

"I never entered my head. I never dreamed that they had been tampered with."

"When did you suspect they had been tampered with?"

"Not until I was in the presence of Commissioner Lane."

"Were you curious after that time to see these expense bills?"

"No, sir."

Forgeries Upset Him.

"Were you upset when you learned that these orders had been tampered with?"

"Yes, and was more upset after the hearing by the commissioner."

"Did you take steps to have these irregularities corrected?"

"I did not remember the matter to my superior officers."

"Did you think the people at Ninth Street station had disobeyed your orders?"

"No."

"I did. It looked like laxity in the checking system."

Mr. Marble referred to the letter written to Thomas E. Swain and to the letter to Mr. Capps, the latter of which Gilbert claimed to have written, and he wanted to take steps at correcting the fraudulent shipments before the Southern Weighing and Inspection Bureau could get into the matter.

Upon information received from Gates you fixed statements in this letter that the only cars improperly recommitment had been passed by Richmond after August 13, 1907."

"I did. He first denied that any cars had been tampered with, and then he said that these things were going on."

"Then you were not nettled at the discovery, but just that the frauds were going on?"

"Yes, I was nettled at the source of discovery."

Talked to Colonel Boykin.

"Did you have an interview with any one to learn how many cars had been tampered with and to discuss the collection of charges?"

"Yes. I had a talk several days after I learned of the frauds with Col. H. M. Boykin, division freight agent of the Seaboard Air Line."

Mr. Gilbert stated that they had talked over an examination of Johnston's books. Others present at this interview were Gates and B. Johnson.

Mr. Gilbert stated that they had endeavored to check up the amount of undercharges when witness entered.

Colonel Boykin asked Mr. Johnson: "continued the witness, 'if something couldn't be done to clear the matter up without further trouble.'"

Gilbert

## JOY